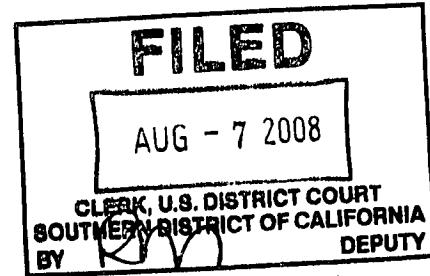


1 BOBBY SHAWN JANOE J25333
 2 CSATF/SP C-1-120
 3 P.O.BOX 5244
 4 CORCORAN CA 93212
 5
 6



6 IN THE UNITED STATES DISTRICT COURT
 7 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

8 BOBBY SHAWN JANOE,) CASE NO.CV 08-0420 JLS(POR)
 9 Petitioner,)
 10 V.) TRAVERSE
 11 JAMES TILTON,)
 12 Respondent.) Judge:Honorable Louisa S.Porter
 13)

12 PETITIONER FILES THIS TRAVERSE

13 In response to the answer to petition for writ of habeas corpus
 14 filed March 5,2008,Petitioner hereby admints,denies, and alleges
 15 the following:

16 1. Petitioner is in lawful custody of California Dept.of
 17 Corrections and Rehabilitation(CDCR),following my conviction for
 18 in 1994 for murder.

19 2. Petitioner denies talking with Bret Janoe in the last 20
 20 years. Petitioner denies knowing Bret was mailing stolen checks
 21 and money orders to Calipatria State Prison(CSP) in envelopes
 22 addressed to me.(Lodg-1 Declaration).

23 3. Petitioner alleges I received three(3)envelopes last week of
 24 April,2006,from CSP trust office. On one of the envelopes was
 25 written:"love you bro!Yes me and scott are talking to work out to
 26 get you attorney on things".(Lodg-2 Copy Envelopes). Petitioner
 27 wrote Bret a letter instructing him to not give attorney funds until
 28 he had spoken to me.(Lodg-1).

1 4. Petitioner alleges first week of May 2006 I received two
2 envelopes from CSP trust office. On the envelopes is written: "Say
3 brother let me know what you need" and "I'll send more money in a couple
4 days".(Lodg-2). Petitioner wrote Bret asking him why he was sending
5 all of these funds to me?(Lodg-1).

6 5. Petitioner alleges based on the empty envelopes I was receiving
7 with the numerical notations CSP employees had written on them, that
8 checks and money orders had arrived with amounts, I relied on that
9 information as being reliable and accurate information, and sent 99.00
10 dollars to mother; I spent 75.00 dollars in canteen; I submitted a trust
11 withdrawal for 1100.00 dollars to mother as aid.(Lodg-1).

12 6. Petitioner alleges I received another envelope from the
13 trust office but cannot remember when.(Lodg-1).

14 7. Petitioner received Rules violation report July 12, 2006.
15 (Respondent Lodg-4).

16 8. Petitioner received hearing on RVR August 4, 2006, where I plead
17 not guilty and submitted three declarations.(Lodg-1,3,4). I was
18 found guilty,(Resp Lodg-5), and sanctioned,to include placement in
19 Administrative Segregation(AD-SEG).(Lodg-5 114-D).

20 9. Petitioner alleges I submitted an Appeal to challenge the guilt
21 findings of August 4, 2006. At the Second level of review trust
22 account employee W.Neciuk,admits they accidentally deposited stolen
23 checks to my trust account.(Lodg-6, 2nd level Decision on Appeal).

24 10. Petitioner alleges I submitted another Appeal,to expose the
25 actions of CDCR employees,depositing stolen checks to my trust
26 account. At the Directors level of review,under findings,reviewer
27 admits employees in CSP trust office inadvertently deposited stolen
28 checks to my trust account.(Lodg-7 Appeal with Decisions).

1 11. Petitioner alleges pursuant to Penal Code section 5008 that
2 trust office employees are in total control of trust accounts, as to the
3 deposits and withdrawals. Once employees deposited stolen checks to
4 my account, they immediately began to spend the money, April 27, 2006 a
5 check 74.90 to state Court; a check 74.90 to Federal Court; May 5, 2006
6 a check 89.79 to state Court, before I even spent any money. (Lodg-8 two
7 page trust account statement).

8 12. Petitioner alleges 2 page letter from Bret proves I knew nothing
9 about stolen checks and money orders arriving at CSP trust office, as
10 Bret explains his scam and cautions me, if asked where money comes from
11 you don't know. If I was involved why would he be stating this? (Lodg-
12 9 two page letter and copy of two checks).

13 13. Petitioner alleges state Court rulings (Resp. Lodg-8, 10, 12)
14 were nothing more than a cursory review of Habeas Corpus Petitions.

15 14. Petitioner alleges CSP would not refer the matter to the local
16 DA office, as they know there is no evidence I knew anything. (Lodg-10).

17 15. Petitioner alleges an evidentiary hearing is necessary to
18 settle the disputes of who is responsible for depositing stolen checks
19 and money orders to my trust account and forwarding the empty envelopes
20 they arrived in to me, notifying me funds had arrived for me to spend.
21 (Lodg-11 Copy of envelopes). I based my decision to spend funds
22 based on the envelopes I received, as I never had a problem before with
23 my trust account; consequently, I had no reason to doubt the envelopes.

24 16. Except as expressly admitted herein petitioner denies each
25 and every allegation of the answer and specifically alleges my due
26 process rights were violated by guilt finding in rules report.

27 WHEREFORE, Petitioner Respectfully Requests, Writ of Habeas Corpus
28 be Granted in full.

1 MEMORANDUM OF POINTS AND AUTHORITIES
2 INTRODUCTION3 This is a case where employees in the trust office at CSP accidentally
4 deposited stolen checks and money orders to my trust account, because
5 Bret had physically altered them by writing and/or typing my name onto
6 them, without my knowledge. Had these employees been competently
7 performing their job duties, they would have realized they were altered
8 and took the appropriate action. There is no evidence in the CDCR
record, that I knew anything about the stolen funds.

9 ARGUMENT

10 I

11 PETITIONER HAS EXHAUSTED ALL STATE COURT REMEDIES

12 Petitioner raised one ground, i.e., the guilt finding on the rules
13 report, as a due process violation, due to the lack of any evidence to
14 prove I knew anything about the stolen checks or money orders.15 Petitioner was placed in AD-SEG August 28, 2006 as a direct result of
16 being found guilty of the rules report. (Lodg-5); consequently, the
17 AD-SEG issue was brought under ground one. Federal Habeas Corpus can
18 be used to challenge the denial of good time credits and placement in
19 AD-SEG. Preiser V Rodriguez 1973 411 U.S. 475.20 The Fourteenth Amendment Due Process Clause of the United States
21 Constitution guarantees that people shall not be deprived of liberty
22 without Due Process of Law. Petitioner argues he was placed in AD-SEG
23 for over 19 months without grounds to do so. The California Code of
24 Regulations, Title 15 section 3335(a) is suppose to provide me with
25 Procedural Due Process Rights prior to and during placement in AD-SEG.
26 Under this rule a prisoner may be placed or retained in segregation:
27 When the prisoners presence in the general population would present a
28 threat to the safety of the prisoner or others; or endangers institution
security or jeopordize the intergity of an investigation into serious

1 misconduct; or criminal conduct. Looking at (Lodg-5) it states I
2 pose a threat to institutional safety and security, as the reason for
3 placement in AD-SEG. I would argue this is nothing more than a ruse,
4 perpetrated by lieutenant Sigler, by a dark desire to clandestinely
5 inflict continuing punishment for the guilt findings on the rules
6 report. The person who mailed the stolen checks to the institution
7 was found dead July 21, 2006, over a month prior to my placement in AD-SEG
8 consequently, the institution did not have to fear any more would be
9 arriving. Moreover the employees in the trust office were the folks
10 who were depositing the stolen checks to my account. How could I pose
11 a threat to institutional safety and security? (Lodg-12 Autopsy report).

12 In Sandin V Conner 1995 515 U.S. 472, 485, the Court held, where the
13 state had specific rules for placing prisoners in segregation, these
14 rules did not invoke Due Process protections unless the restraint at
15 issue imposed atypical and significant hardship in relation to
16 ordinary prison life. The Court went on to explain what facts would
17 be relevant for deciding whether Due Process protections were required
18 to include the length of segregation, and the conditions in which the
19 prisoner were housed. Ibid at p. 483-485. I would argue that being
20 housed in AD-SEG in only boxers shorts and t-shirt and plastic slippers
21 for over 19 months, to include the freezing cold temperatures of winter
22 months, was atypical and significant hardship in relation to ordinary
23 prison life and would invoke Due Process protections. There is no
24 evidence I posed a threat to institutional safety and security in the
25 CDCR record. By analogy, in Wilkinson V Austin 2005 ___ U.S. ___ 125S.CT
26 2384, the Court held, placement in supermax with only a yearly review
27 met the atypical and significant hardship test of Sandin V Conner 515
28 U.S. 472, thus the prisoners who brought the suit had a liberty

1 interest in being free from supermax placement. I would argue I to
2 had a liberty interest to be free from AD-SEG housing, Due Process Right.

3 II

4 PETITIONER HAS ALLEGED A COGNIZABLE CLAIM
FOR FEDERAL HABEAS CORPUS RELIEF

5 Federal Habeas Corpus can be used to challenge the denial of good time
6 credits and placement in AD-SEG. Preiser V Rodriguez 1973 411 U.S.475

7 In Wolff V McDonnell 1974 417 U.S.539, the Court held prisoners were
8 entitled to procedural protections prior to punishment.

9 On a rule violation, guilt can only be found if there is a preponder-
10 ance of the evidence. Penal Code section 2932(c)(5). To sustain a
11 disciplinary finding of guilt on judicial review, there must be some
12 evidence to support the decision. Superintendent V Hill 1985 472 U.S.445.
13 Under that same evidence standard a disciplinary finding of guilt can
14 be over turned by the Court, if there is no evidence supporting charge.
15 Cato V Rushen(9th cir 1987)824 F.2d 703; also see Burnsworth V Gunders-
16 son(9th cir 1999)179F.2d 771,774..

17 There is no evidence in the cdcr record I knew anything about the
18 stolen checks or money orders; nor any evidence I was a threat to the
19 safety and security of the institution.

20 III

21 STATE COURT DENIAL OF PETITIONERS CLAIMS WAS INCONSISTENT
WITH FEDERAL LAW AND WAS BASED ON AN UNREASONABLE DETERMINATION
OF THE FACTS

22 Under the Anti-Terrorism Effective Death Penalty Act(AEDPA) when
23 a state prisoners claim has been adjudicated on the merits in state
24 Court, a Federal Court may only grant an application for a Writ of
25 Habeas Corpus, if the state Court adjudication was either 1)contrary
26 to, or involved an unreasonable application of clearly established
27 Federal law, as determined by the United States Supreme Court; or 2)
28 based on an unreasonable determination of the facts in light of the

1 evidence presented at the state Court proceedings. 28 U.S.C section
2 2254(d)(1)(2). To over come the presumption that a state Court ruling
3 is correct petitioner must present clear and convincing evidence that
4 the factual findings was incorrect.28 U.S.C section 2254(e)(1).

5 I was a victim of identity theft by my brother Bret, who wrote my name
6 on the stolen checks and money orders, and then mailed them to CSP trust
7 office.. The actions of the trust office employees is ridiculous, i.e.,
8 depositing stolen checks and money orders to my trust account and then
9 forwarding the empty envelopes to me, as notification funds had arrived
10 for me to spend. As a practical matter I have no control what others
11 mail to the prison or write on the outside of those envelopes they use
12 to mail to the prison. I would argue the employees in the trust office
13 are the gatekeepers as to what funds are deposited or withdrawn from my
14 trust account. Penal Code section 5008. In Re Parker 1984 151 Cal.
15 App.3d 583, at p.586, the Court held, "The Dept.of corrections regula-
16 tions for establishing and maintaining inmate trust accounts, which
17 are authorized by Penal Code section 5008, provide a system for proper
18 accountability and control of all personal funds belonging to inmates".

19 On May 17, 2006 employees in trust office determine Bret mailed two
20 stolen checks and a letter explaining his scam(Loge-13 one page report
21 and Resp Answer p.2 line 11-16), yet they take no internal action
22 such as issuing a Notification of Disallowing Mail Form 1819 as is
23 required by Cal.Code of Regs,Tit 15 section 3136(a). Moreover trust
24 office employees continue to withdraw funds from my trust account, for
25 a total of thirteen withdraws(Log-8). Then June 2, 2006 just 16 days
26 later employees deposit a check that was obviously altered to my trust
27 account.(Log-14). I would argue that the depositing of this check
28 (Log-14) was no accident, as employees were already on Notice that

1 stolen checks had arrived 16 days earlier. Look at the check(Lodg-14)
2 and you will clearly see another name behind my name on the check and
3 the address is not my address. It is not reasonable for trust office
4 employees to state they were so incompetent they did not see this check
5 was altered, and accidentally deposited it to my trust account.(Lodg-7).
6 Out in society at a bank or store, if employees accepted this check(Lodg
7 -14) they would be fired. The 2 page letter from Bret(Lodg-9) provides
8 clear and convincing evidence that I did not know anything about the
9 stolen checks or money orders, as he explained his scam and cautions
10 me to state I don't know where money comes from, if asked. I never
11 attempted to send any funds to Bret, as I had no idea what he was doing.
12 (Lodg-1,9). The two Appeals(Lodg-6,7) provide clear and convincing
13 evidence trust office employees are the culpable party for depositing
14 the stolen funds to my account, which makes the state Court rulings a
15 unreasonable determination of the facts and a unreasonable application
16 of Superintendent V Hill 1985 472 U.S. 445,454.

17 To sustain a conviction for check fraud I would have to give the check
18 to trust office employees, knowing it was stolen, anticipating they
19 would be cashed onto my trust account. People V Pugh 2002 104 Cal.App
20 4th 66;Also see People V Jackson 1979 92 Cal.App 3d 556,561.

21 To sustain a conviction for possession of stolen property, property
22 must be stolen; I would have to know it was stolen; and I would have had
23 to possess it. In Re Anthony J. 2004 11 Cal.Rptr3d 865; People V
24 King 2000 81 Cal.App4th 472,476; People V Land 1994 30 Cal.App4th
25 220,223; People V Kunkin 1973 9 Cal.3d 245,249..

26 I never even saw the checks or money orders prior to being deposited
27 to my trust account; consequently, I could not be guilty of check fraud
28 or possession of stolen property (Resp Lodg-4, p.2,6th paragraph).

1 CONCLUSION

2 There is no evidence in the CDCR record that I knew anything about
3 the stolen checks and money orders; nor that I was a threat to the
4 safety and security of the institution, and as such my Due Process
5 Rights were violated, pursuant to the 14th Amendment to the United
6 States Constitution and California Constitution Article 1 section
7 7 and 15, by the guilt finding on the Serious Rule Violation Report 115
8 as the disciplinary findings are not supported by any evidence.
9 Superintendent V Hill 1985 472 U.S. 445.

10 Petitioner would respectfully request the Court:

11 Issue Writ of Habeas Corpus;

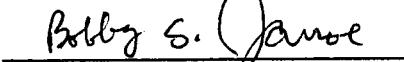
12 Issue Order for Evidentiary Hearing;

13 Declare the Rights and Responsibilities of all involved parties;
14 Reverse the guilt findings on Serious Rule Violation Report 115
15 and Order the 115 be removed from my file and all copies destroyed.

16

17 Date July 31, 2008

18 Respectfully Submitted,

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BOBBY SHAWN JANOE

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